

THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)

FILED  
MAR 19 2001  
U.S. BANKRUPTCY COURT  
DISTRICT OF MARYLAND  
BALTIMORE  
DROP BOX

In re:

FRANK'S NURSERY & CRAFTS, INC., et  
al.,

Debtors.

Case Nos. 01-5-2415 and 01-5-2416  
(Chapter 11)  
(Jointly Administered  
(under Case No. 01-5-2415)

\* \* \* \* \*

**DEBTORS' MOTION FOR ORDER: (a) AUTHORIZING  
DEBTORS TO CONDUCT CERTAIN STORE CLOSING  
SALES PURSUANT TO SECTIONS 105 AND 363 OF  
THE BANKRUPTCY CODE AND GRANTING  
ANCILLARY RELIEF RELATED THERETO; (b)  
AUTHORIZING AND APPROVING RETENTION  
INCENTIVE PROGRAM FOR AFFECTED  
EMPLOYEES; AND (c) GRANTING RELATED RELIEF**

Frank's Nursery & Crafts, Inc. and FNC Holdings, Inc., debtors and debtors in possession (collectively, the "Debtors") in the above-captioned cases, by their undersigned counsel, file this motion for an order: (a) authorizing the Debtors to conduct certain store closing sales pursuant to sections 105(a) and 363(b) of the Bankruptcy Code; (b) authorizing and approving a retention incentive program for affected employees; and (c) granting related relief (the "Motion"), and in support thereof state:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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2. The relief sought with this Motion is predicated upon sections 105(a) and 363(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq. (the “Bankruptcy Code”).

### **The Chapter 11 Cases**

3. On February 19, 2001 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors continue in possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only.

4. On March 8, 2001, this Court entered a final order approving an up to \$100 million debtor-in-possession financing facility with a syndicate of lenders led by Wells Fargo Retail Finance, Inc. (“Wells Fargo”) as agent.

5. On March 9, 2001, the United States Trustee appointed an official committee of unsecured creditors (the “Committee”) in these cases.

### **The Debtors and Their Business Operations**

6. Frank's, founded in 1949, operates the largest United States chain (as measured by sales) of specialty retail stores devoted to the sales of lawn and garden products. Lawn and garden products include green and flowering plants for outdoor and indoor usage, live landscape products such as trees and shrubs, fertilizers, seeds, bulbs, gardening tools and accessories, planters, watering equipment, garden statuary and furniture, wild bird food and feeders, mulches and specialty soils. Frank's also is a leading retailer of Christmas Trim-A-Tree merchandise, artificial flowers and arrangements, garden and floral crafts, and home decorative

products. FNC (formerly known as General Host Corporation) is the sole shareholder of Frank's.

7. As of the Petition Date, Frank's operated 217 retail stores in 15 states, primarily in the Mid-Atlantic, Midwest and Northeast. At that time, an additional 44 stores were being closed as part of a previously announced plan to sell under-performing store locations. In its fiscal year ending January 28, 2001, Frank's had sales of approximately \$435 million. Currently, the Debtors employ approximately 1,900 full-time and 5,000 part-time employees. As of November 5, 2000, the book value of the Debtors' assets was approximately \$471.9 million and total debt was approximately \$338.3 million.

8. The Debtors' sales are seasonal. Their lawn and garden revenues are concentrated principally in the Spring and, to a lesser extent, in the Fall. Trim-A-Tree sales occur between Thanksgiving and Christmas.

9. During most of the first half of 2000, weather patterns hurt lawn and garden product sales across the Debtors' principal markets. During the third quarter of 2000, the Debtors decided to close 44 under-performing stores, liquidate their inventories, and sell the closed stores owned by the Debtors. Later in 2000 it became apparent that the Debtors' Trim-A-Tree holiday season sales were below expectations, which was consistent with the general softness in sales at retailers during this period.

10. In 2001, notwithstanding excess borrowing availability under their existing bank credit facilities, the Debtors were unable to draw down sufficient funding to meet the Debtors' working capital needs. Also, after access to their credit facilities had been curtailed, the Debtors were unable to secure additional prepetition funding to meet their working capital

needs. Ultimately, the Debtors determined the most appropriate method to obtain such financing and achieve their restructuring objectives was through chapter 11 filings.

### **Relief Requested**

11. In recent months, the Debtors evaluated their remaining store base to determine which, if any, additional stores should be closed. The Debtors considered, among other things, each store's: (a) recent sales performance and trends; (b) location and proximity to other Frank's locations or to competitors; (c) size and physical condition; and (d) lease terms. Based upon these and other factors, the Debtors identified 22 additional stores to be closed (the "Additional Closing Stores"). The Additional Closing Stores are identified on Exhibit "A" hereto.

12. As the Additional Closing Stores will close once the GOB Sales conclude, the Debtors fear that employees at Stores may resign in favor of other employment prior to the conclusion of the GOB Sales. This would reduce recoveries to the Debtors from the GOB Sales. Accordingly, the Debtors have developed an employee retention program (the "Retention Program") that would encourage the Debtors' personnel at the Additional Closing Stores to remain until the GOB Sales conclude.

13. The Retention Program, which is detailed on Exhibit "B" hereto, would provide employees who remain at the Additional Closing Stores as long as needed by the Debtors with payments equal to three to eight weeks' salary, depending upon position and length of service. The maximum aggregate cost of the Retention Program (assuming all employees at the Additional Closing Stores remain until terminated by the Debtors) would approximate \$260,000. The Retention Program covers approximately 364 rank and file employees ranging

from part-time hourly employees up to Store Managers. It does not apply to the Debtors executive management or employees at stores other than the Additional Closing Stores.<sup>1</sup> The average payouts are estimated to run from \$201 for part-time hourly employees to \$3,965 for Store Managers.

14. Accordingly, by this Motion, the Debtors request entry of an order:
  - (a) authorizing the Debtors to conduct store closing sales (the “GOB Sales”) at the Additional Closing Stores;
  - (b) authorizing and approving the Debtors’ sale of the Debtors’ inventory and fixtures, furniture and equipment in the Additional Closing Stores pursuant to 11 U.S.C. § 363, free and clear of all liens, encumbrances and interests;
  - (c) superceding any state and local laws and regulations imposing licensing requirements, waiting periods and time limits, bulk sales and other restrictions upon the conduct of the GOB Sales;
  - (d) prohibiting third party interference with the GOB Sales, notwithstanding provisions in contracts or leases that otherwise may restrict or prevent the GOB Sales or require further consents;
  - (e) authorizing and approving a retention program for employees at the Additional Closing Stores; and
  - (f) granting related relief.

This Motion, however, does not deal with the disposition of the leases for the Additional Closing Stores. These leases will be addressed in future motions.

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<sup>1</sup> The Debtors are reviewing options for a standard employee retention, severance, and bonus program with respect to executive management and rank and file employees at the locations that will be going forward. When this analysis is complete, the Debtors anticipate presenting such a program to the Court for approval.

**Applicable Authority**

A. Authorization To Conduct Store Closing Sales Is In The  
Best Interests Of The Debtors' Estates And Creditors

15. Section 363 provides, in pertinent part:

(b)(1) The trustee, after notice and a hearing, may. . .  
sell . . . other than in the ordinary course of business,  
property of the estate.

11 U.S.C. § 363(b).

16. Under applicable legal standards, approval of a sale is appropriate if the court finds the transaction has a sound business purpose or represents a reasonable business judgment by the debtor. See In re W.A. Mallory Company, Inc., 214 B.R. 834, 836-37 (Bankr. E.D.Va. 1997) (noting that courts follow the 'sound business purpose' test when examining section 363(b) sales); In re WBQ Partnership, 189 B.R. 97, 102 (Bankr. E.D.Va. 1995) (adopting "sound business purpose" test for section 363(b) sales as set forth in In re Lionel Corp.); see also Myers v. Martin (In re Martin), 91 F.3d 389, 396 (3d Cir. 1996); In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983).

17. Ample business justification exists for authorizing the Debtors to conduct the GOB Sales and close the related stores. The stores have been unprofitable and have negative sales trends. Generally, the stores are not in core Frank's store clusters. Closing of the Additional Closing Stores should be consistent with the Debtors' reorganization. Further, the size, physical condition, and lease terms for the stores all militate in favor of closing the stores. Moreover, the Debtors believe approval of the GOB Sales now would maximize the Debtors' recoveries therefrom by allowing the GOB Sales to occur during the Debtors' primary selling season.

B. Sale Free And Clear Of Liens And Interests

18. To facilitate the sale of inventory and other property located in the Additional Closing Stores, the Debtors request authorization to sell such property free and clear of any and all liens, encumbrances and interests that may be asserted. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363 "free and clear of any interest in such property of an entity other than the estate" if one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See, e.g., In re General Bearing Corp., 136 B.R. 361, 366 (Bankr. S.D.N.Y. 1992) (listing requirements); see also In re Collins, 180 B.R. 447, 449-50 (Bankr. E.D.Va. 1995)("Section 363(f) is phrased in the disjunctive, such that only one of the enumerated conditions must be met in order for the Court to approve the proposed sale."); In re P.K.R. Convalescent Centers, Inc., 189 B.R. 90, 93-94 (Bankr. E.D.Va. 1995)("[Section] 363 covers more situations than just sales involving liens . . . Section 363(f) addresses sales free and clear of any interest . . .").

19. The Debtors believe the GOB Sales will satisfy one or more of the section 363(f) requirements. The Debtors' known creditors asserting liens on the property to sold are: (a)

the DIP Lenders; and (b) certain state, county and local taxing authorities who may have asserted liens against the Debtor's property based upon purported prepetition ad valorem or other taxes.

20. If any taxing authority or other party has a prepetition lien or other encumbrance (the "Encumbrances") on assets sold pursuant to this Motion that is senior to the DIP Lenders, then the Debtors propose to set aside from the GOB Sales proceeds an amount equivalent to such Encumbrances. The Debtors hereby request authority to pay those claims upon arriving at a resolution of the Encumbrances mutually satisfactory to the Debtors and the party asserting the Encumbrance.

C. The Court Should Override Any Lease Restrictions That  
Might Impair The Debtors' Ability To Conduct The GOB Sales

21. The Additional Closing Stores are leased by the Debtors and such leases may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, going out of business, inventory liquidation, or similar sales. In other chapter 11 cases, such provisions have been found to be unenforceable as impermissible restraints on a debtor's ability to maximize the value of its assets under section 363. See, e.g., In re Ames Dep't Stores, Inc., 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (enforcement of anti-going-out-of-business sale clause would contravene overriding federal policy requiring debtors to maximize assets); In re Tobago Bay Trading Co., 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (anti-going-out-of-business sale clause in lease is unenforceable).

22. Courts in this and other districts routinely have entered orders in retail chapter 11 cases permitting liquidation sales. See, e.g., In re Bloomsbury Group, Inc., Case No. 01-5-3621-JS (Bankr. Md. March 2001); In re Sunny's Great Outdoors, Inc., Case No. 00-5-0546-SD (Bankr. Md. January 19, 2000); In re Heilig-Meyers Company et al., Case No. 00-



34533 (DOT) (Bankr. E.D. Va. September 13, 2000); In re Best Products Co., Inc., No. 96-35267 (DOT) (Bankr. E.D. Va., September 24, 1996); In re WSR Corp., Case No. 98-1241 (MFW) (Bankr. D. Del.); In re Homeplace Stores, Inc., Case No. 98-8 (PJW); In Re Montgomery Ward Holding Corp., Case No. 97-1409 (PJW) (Bankr. D. Del.); In Re County Seat, Inc., Case No. 96-1637 (HSB) (Bankr. D. Del.).

23. Further, store closing or liquidation sales are routine in chapter 11 cases involving retail debtors and courts consistently authorize such sales despite lease provisions purporting to forbid such sales in the ordinary course of business. See, e.g., In re R.H. Macy & Co., 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); Ames Dep't Stores, 136 B.R. at 359 ("to enforce the anti-GOB sale clause of the [l]ease would contravene overriding federal policy requiring Debtors to maximize estate assets by imposing additional constraints never envisioned by Congress."); In re Tobago Bay, 112 B.R. at 465-66; In re Libson Shops, Inc., 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982).

24. Thus, to the extent any such restrictive clauses may exist in any Additional Closing Store lease, the Debtors' lessors should not be permitted to interfere with, or otherwise seek to restrict the Debtors from conducting the GOB Sales.<sup>2</sup>

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<sup>2</sup> Although not seeking such a determination in this Motion, the Debtors reserve their right to argue that the conduct of the GOB Sales should not be deemed to constitute a default under any relevant lease, despite any provision in such lease or contract to the contrary, that needs to be cured under section 365 of the Bankruptcy Code for the Debtors to assume such lease.

D. Certain State And Local Requirements That Do Not Implicate  
Health And Safety Concerns Should Not Apply Here

25. Although the Debtors have not conducted a comprehensive study of such requirements for each jurisdiction in which the Additional Closing Stores are located, such locales may have licensing or permitting requirements, statutory or regulatory waiting periods, and/or time limits that normally would affect the conduct of liquidation or other similar store closing sales. Also, some of the localities may have statutes or regulations requiring creditor notification before bulk sales are conducted.

26. In the context of chapter 11 cases such as these, however, such statutes and regulations are redundant because creditors are given advance notice of the proposed GOB Sales, as well as an opportunity to be heard before this Court. Accordingly, the Debtors believe such requirements should not apply for the limited purpose of conducting the GOB Sales.

27. Moreover, certain of the statutes and regulations specifically may provide or have been interpreted to mean that if a liquidation or bankruptcy sale is court authorized, then a company need not comply with the regulations. In particular, courts have held that 28 U.S.C. § 959(b) does not apply to debtors liquidating assets.<sup>3</sup> See, e.g., California State Bd. of Equalization v. Goggin, 191 F.2d 726 (9th Cir. 1951) (28 U.S.C. § 959 does not apply to transactions that are in the nature of a liquidation), cert. denied, 342 U.S. 909 (1952); see also In re Borne Chemical Co., Inc., 54 B.R. 126, 135 (Bankr. D.N.J. 1984) (holding that 28 U.S.C. § 959(b) is applicable only where property is being managed or operated for the purpose of

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<sup>3</sup> 28 U.S.C. § 959(b) provides in pertinent part that a debtor in possession "shall manage and operate the property in [its] possession . . . according to the requirements of the valid laws of the State in which such property is situated . . . ."

continuing operations).<sup>4</sup> Here, the GOB Sales will be of limited duration, will be fairly described in advertising, and no aspect of the relief sought is intended to alter laws or regulations affecting public safety. For these and other reasons, 28 U.S.C. § 959(b) should not be read to apply to the GOB Sales, as the Debtors are ceasing their operations in the Additional Closing Stores with the knowledge and oversight of their creditors and this Court.

28. Additionally, bankruptcy courts have recognized that federal bankruptcy law preempts state and local laws that contravene policies underlying the Bankruptcy Code. See, e.g., In re Shenango Group, Inc., 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) ("Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code. . . . [A] state statute cannot place burdens on them where the result would contradict the priorities established by the federal bankruptcy code."). While preemption of state law is not always appropriate, see In re Baker & Drake, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (no preemption where state law prohibiting taxicab leasing was promulgated in part as a public safety measure), it is appropriate where, as here, the only state laws involved concern economic regulation rather than the protection of public health and safety. Id. at 1353 (cases suggest that "federal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety").<sup>5</sup>

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<sup>4</sup> But cf. In re White Crane Trading Co., Inc., 170 B.R. 694, 702-704 (Bankr. E.D. Cal. 1994) (noting that at juncture where debtors introduce new merchandise, prolong going-out-of-business sales for unlimited duration, and mislead public with false advertising, state consumer protection laws become significant); In re Lauriat's, Inc., 219 B.R. 648, 649 (Bankr. D. Mass. 1998) (holding that statutory construction does not permit waiver of 28 U.S.C. § 959(b)).

<sup>5</sup> Examples of Bankruptcy Code conflicts with state law include: section 1146(c) of the Bankruptcy Code exempts debtors from paying certain stamp and similar taxes; section 502(b)(6) of the Bankruptcy Code caps a landlord's state law claim for damages upon lease rejection; section 1126 of the Bankruptcy Code overrides state law contract rights in binding parties without their consent;

29. Here, section 363, which implicitly requires debtors to operate their businesses to maximize recoveries for all constituencies, would be undermined if the Court does not provide for the state and local statutes and regulations establishing licensing or permitting requirements, waiting periods, time limits or bulk sale restrictions not to apply to the GOB Sales. Such relief has been granted in other recent bankruptcy cases in this and other districts. See In re Bloomsbury Group, Inc., Case No. 01-5-3621-JS (Bankr. Md. March 2001); In re Sunny's Great Outdoors, Inc., Case No. 00-5-0546-SD (Bankr. Md. January 19, 2000); In re Heilig-Meyers Company et al., Case No. 00-34533 (DOT)(Bankr. E.D. Va. September 13, 2000); In re Best Products Co., Inc. No. 96-35267 (DOT) (Bankr. E.D. Va., September 24, 1996); In Re County Seat, Inc., Case No. 96-1637 (HSB) (Bankr. D. Del.); In re Pic 'N Pay Stores Inc., Case No. 96-182 (PJW) (Bankr. D. Del.).

30. Importantly, the exemption requested here is narrowly tailored to facilitate the success of the GOB Sales. The Debtors do not seek a general waiver of all state and local requirements that would apply to the GOB Sales. Rather, the relief requested is restricted to the following: (a) the Debtors would be authorized to conduct the GOB Sales without the necessity of, and the delay associated with obtaining various state licenses or permits, observing state and local waiting periods or time limits, or satisfying any additional requirements with respect to advertising, conducting the GOB Sales as a store closings or similar type sales, or transferring

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section 502(b) of the Bankruptcy Code stops the accrual of interest on unsecured or undersecured debt notwithstanding state law contract rights permitting such accrual; and section 365 of the Bankruptcy Code negates contractual provision that offend the rehabilitation goals of the Bankruptcy Code.

31. inventory between the Additional Closing Stores; and (b) bulk sales laws, to the extent applicable, would be waived, as creditors are protected by the notice of this Motion and the jurisdiction of this Court. Further, the GOB Sales and the requested waiver are scheduled for a discrete period of time, and the GOB Sales would be conducted in accordance with this Motion, which is subject to review by creditor representatives, and approval by this Court. Moreover, the Debtors intend to be bound by and comply with remaining statutes and regulations, such as health and safety laws.

32. Accordingly, the Debtors request this Court to authorize the Debtors to conduct the GOB Sales without the necessity of, and the delay associated with, obtaining various state licenses and/or satisfying any additional requirements in connection therewith. Likewise, the Debtors request that bulk sales laws, to the extent applicable, be waived as creditors are protected by the notice of this Motion being provided and the jurisdiction of this Court.

33. The Debtors also request that no other person or entity including, but not limited to, any lessor or federal, state or local agency, department or governmental authority, be permitted to take any action to prevent, interfere with, or otherwise hinder consummation, advertising or promotion (including through the posting of signs) of the GOB Sales, in the manner set forth herein. As stated above, the Retention Program only covers approximately 364 rank and file employees ranging from part-time hourly employees up to Store Managers. It does not apply to the Debtors executive management or employees at stores other than the Additional Closing Stores. The average payouts are estimated to run from \$201 for part-time hourly employees to \$3,965 for Store Managers.

E. Approval of Retention Program

33. As the Debtors routinely have implemented retention programs in connection with prior store closings, the Debtors arguably already are authorized to implement the Retention Program pursuant to section 363(c)(1) of the Bankruptcy Code, which allows a debtor in possession to "use property of the estate in the ordinary course of business." 11 U.S.C. § 363(c)(1). However, even if the Retention Program is subject to Court approval under section 363(b)(1), such approval is warranted here. As detailed on Exhibit "B" hereto, the Retention Program would provide the Debtors' employees at the Additional Closing Stores who remain as long as needed by the Debtors with payments ranging from three to eight weeks' salary, depending upon the employee's position and length of service with the Debtors.

34. Courts have found that a debtor's use of reasonable retention bonuses and other incentives to retain key employees is a valid exercise of the debtor's business judgment. See, e.g., In re America West Airlines, Inc., 171 BR. 674, 678 (Bankr. D. Ariz. 1994) (it is the proper use of a Debtor's business judgment to propose bonuses for employees who helped propel the Debtor successfully through the bankruptcy process); In re Interco Inc., 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991) ("debtors' business judgment" was controlling in the approval of a "performance/retention program"); see also In re APS Holding Corp. et al., Case No. 98-197 (PJW) (Bankr. D. Del.) (Order dated September 2, 1998) (granting similar relief in chapter 11 liquidation case).

35. Also, the Court should approve the Retention Program pursuant to Bankruptcy Code section 105(a). That section provides in pertinent part that: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions

of this title.” 11 U.S.C. § 105(a). These expansive equitable powers enable a court to fashion any order or decree necessary preserve or protect the value of the Debtors' assets. See, e.g., In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."); Bird v. Crown Convenience (In re NWFX, Inc.), 864 F.2d 588, 590 (8th Cir. 1988) ("The overriding consideration in bankruptcy . . . is that equitable principles govern."); In re Cooper Properties Liquidating Trust, Inc., 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) ("Bankruptcy Court is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of their creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.").

36. Adoption of the Retention Program would represent a valid exercise of the Debtors' sound business judgment. Without any such incentive in place, employees at the Additional Closing Stores may resign, making the conduct of the GOB Sales impracticable or less profitable. Thus, approval of the Retention Program is an essential component of the relief sought in connection with the GOB Sales.

### **Notice**

37. The Debtors will provide notice of this Motion to: (a) the United States Trustee; (b) counsel for Wells Fargo; (c) each entity having an interest in the Additional Closing Stores, including direct landlords and sublandlords, where appropriate, for each of the affected stores; (d) relevant state and local taxing authorities; (f) counsel for the Committee; and (g) any other party that has filed a request for notice in these cases pursuant to Fed. R. Bankr. P. 2002

and served such request upon the Debtors' counsel. The Debtors submit that no other or further notice is necessary or required.

38. As this motion presents no novel issues of law and the authorities relied upon are set forth above, the Debtors respectfully request that this Court waive any requirement that a separate memorandum of law accompany this Motion.

**No Prior Application**

39. No prior motion has been made requesting the relief sought herein.

**Conclusion**

WHEREFORE, the Debtors respectfully request entry of the annexed order granting the relief requested herein and granting such other and further relief as may be just and proper.\*

WILLKIE FARR & GALLAGHER  
Alan J. Lipkin  
Steven Wilamowsky  
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New York, New York 10019-6099  
(212) 728-8000

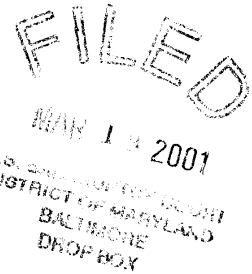
and

WHITEFORD, TAYLOR & PRESTON L.L.P.



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Seven Saint Paul Street, Suite 1400  
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(410) 347-8700

Co- Counsel for the Debtors  
Frank's Nursery & Crafts, Inc., et al.



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\* Any inquiries regarding this motion should be directed to Steven Wilamowsky (212) 728-8499.



**CERTIFICATE OF SERVICE**

I certify that on this 19<sup>th</sup> day of March, 2001, a copy of the foregoing pleading was sent via overnight delivery to the parties listed on the attached Service List. The pleading as served upon the parties excluded a copy of the attached Service List in order to expedite copying and transmittal. Any party desiring a copy of the pleading with the Service List attached may contact the undersigned counsel or may review the original pleading at the Clerk's Office.

  
Martin T. Fletcher

FILED  
MAR 19 2001  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
BALTIMORE  
DROP BOX

## **Frank's Nursery & Crafts Limited Service List**

Bankers Trust Company  
Attn: Asante Denis  
Four Albany Street  
Fourth Floor  
New York, New York 10006

I-Raymond Steve & Bros. Development  
Attn: Steve Tsui  
St. 611 Tower A Hunghom  
39 Matauwei Rd.  
HungHom, Kowloon

Easy Gardener  
PO Box 21025  
Waco, TX 76702-1025

1-Boto Company Ltd  
Attn: Michael Kao  
17/F Eight Commercial Tower  
8 Sun VIP St.  
Chaiwan Hong Kong

Hermann Engelmann Grnhse. Inc.  
Attn: Sandra Kitain  
2009 Marden Rd.  
Apopka, FL 32703

The Washington Post  
Attn: Royston DeSouza  
P.O. Box A200  
Washington, D.C. 20071

Burpee Garden Products Co.  
Attn: Fred Hobson  
300 Park Avenue  
Warminster, PA 18974

Lake Valley Seed  
5717 Arapahoe  
Boulder, CO 80303-1338

Variety Accessories, Inc.  
Attn: Mike  
P.O. Box 4528  
Great Neck, NY 11027

Marvin Press  
Sylvia Rena  
Gary Products Group Inc.  
2601 S.E. Loop 289  
Lubbock, TX 79404

Fiskars Group  
636 Science Drive  
Madison, WI 53711

Great Lakes Craft & Hobby Dist.  
Attn: Tom or Steve  
46660 Van Dyke  
Shelby Township, MI 48317

Charlie Vorm  
American Oak Preserving Co. Inc.  
601 Mulberry St.  
North Judson, IN 46366

C.M. Offray & Son, Inc.  
Attn: Jenny  
858 Willow Circle  
Hagerstown, MD 21740

Angel Plants, Inc.  
Attn: Jack  
560 Deer Park Avenue  
Dix Hills, NY 11746

John Van Bourgondien  
Linda Williams  
K. Van Bourgondien & Sons, Inc.  
P.O. Box A, Route 109  
Babylon, NY 11702

Valfei Products  
Attn: Sylvai Vaillancourt  
P.O. Box 185  
Norton, VT 05907

Nolan & Cunnings  
Attn: John  
P.O. Box 2111  
Warren, MI 48090-2111

NK Lawn & Garden Co.  
Attn: Stacy Deabler  
P.O. Box 24028  
Chattanooga, TN 37422-4028

Graphic Communications  
Attn: Brian Brazell  
P.O. Box 54120  
Los Angeles, CA 90054-0120

Happy Holiday Xmas Trees/Color  
Spot  
Attn.: Jeannie  
3819 E. Sidney Rd.  
Sheridan, MI 48884

Cluett Corp.  
Attn: Phil Matthews  
P.O. Box 6666  
Tyler, TX 75711

Wilson Enterprises  
Attn: Kathy Wilson  
P.O. Box 4, U.S. Hwy 2 & 41  
Wilson, MI 49896

Polytree  
25/F CCT Telecom Bldg.  
11 Wo Shing Street  
Fo Tan Shatin, N.T. Hong Kong

## **Frank's Nursery & Crafts Limited Service List**

Kirk Company  
Attn: Tom Thomas  
201 St. Helens Ave.  
Tacoma, WA 98402-2519

I.C.Y. Hung Co. Ltd.  
Attn: Tony Hong  
11 F/Telford House 16 Wang Hoi Road  
Kowloon Bay, Kowloon

Wilson WreathCo. Ltd & KeyBank  
NA  
Attn: Marleta  
480 Main Street  
Presque Isle, ME 04769

Teufel Holly Farms  
Attn: John Coulter  
160 S.W. Miller Rd  
Portland, OR 97225

LMA Capital Group, LLC  
1800 Sutter Street, Suite 100  
Concord, CA 94520

Greg A. Nickell  
c/o Morrison & Hecker., L.L.P.  
2600 Grand Avenue  
Kansas City, MO 64108

Artfaire/CPS Corporation  
Attn: Sarah  
1715 Columbia Hwy P.O. Box 68-1000  
Franklin, TN 37068

CIT Group/Equipment Financing, Inc.  
900 Ashwood Parkway  
Atlanta, GA 30338

Tompkins  
1040 W. Grand Blvd.  
Detroit, MI 48208

Au Kin Hung  
Davie Boag  
H.K. Int'l Trade & Exhibit Ctr.  
1 Trademart Drive, Wang Ching St.  
Rm No. 1001-1011, 10<sup>th</sup> Floor  
Kowloon Bay, Kowloon Hong Kong

G/S Leasing, Inc.  
3290 W. Big Beaver Rd, Ste 200  
Troy, MI 48084

Key Commercial Mortgage  
911 Main Street, Suite 1500  
Kansas City, MO 64105

People's Bank  
850 Main Street  
Bridgeport, CT 06604-4913

First Union National Bank of North  
Carolina, Tower 8, One First Union Center  
Charlotte, NC 28288

Resource Leasing  
397 Herndon Parkway, Suite 5  
Herndon, VA 20170-4821

IBM Credit  
1 North Castle Drive  
Armonk, NY 10504-2575

State Street Bank and Trust Company  
2 Avenue deLafayette  
Boston, MA 02111-1724  
Attn: Decker Adams

Sanwa Leasing Corp.  
P.O. Box 7023  
Troy, MI 48007-7023

Hilco Merchant Resources, LLC  
Attn: Cory Lipoff  
5 Revere Drive, Suite 206  
Northbrook, IL 60062

Forsythe/McArthur Associates, Inc.  
7500 Frontage Road  
Skokie, IL 60077

Comptroller of the Treasury  
Sales & Use Tax Div. – Claims  
301 West Preston Street  
Baltimore, MD 21201

Latham & Watkins  
Attn: Josef S. Athanas  
Counsel for Hilco  
Sears Tower, Suite 5800  
Chicago, IL 60606

Newcourt Technologies Corporation, f/k/a  
AT&T Systems Leasing Corporation  
2285 Franklin Road, 2<sup>nd</sup> Floor  
Bloomfield Hills, MI 48302

MD Unemployment Insurance  
Admin.  
1100 N. Eutaw Street, #401  
Baltimore, MD 21202

### **Frank's Nursery & Crafts Limited Service List**

KC Funding Corp.  
210 West Tenth Street, Sixth Floor  
Kansas City, MO 64105

Siemens Credit Corporation  
991 U.S. Highway Route 22 West,  
Suite 300  
Bridgewater, NJ 08807

U.S. Attorney  
U.S. Courthouse  
101 West Lombard Street  
Baltimore, MD 21201

Midland Commercial Financing Corp.  
210 West Tenth Street, Sixth Floor  
Kansas City, MO 64105

Atlas Auto Leasing Inc.  
39935 Grand River  
Novi, MI 48375

Internal Revenue Service  
Special Procedures Branch  
31 Hopkins Plaza, Room 1140  
Baltimore, MD 21201

LaSalle National Bank  
135 S. LaSalle Street  
Chicago, IL 60603

Steelcase Financial  
Administrative Center  
901 44<sup>th</sup> Street, S.E.  
Grand Rapids, MI 49508

Securities and Exchange Commission  
450 Fifth Street NW  
Washington, DC 20549

Comptroller of the Treasury  
Income Tax Div. – Legal Unit  
Income Tax Building  
110 Carroll Street  
Annapolis, MD 21411

Nancy V. Alquist, Esquire  
Ballard, Spahr, Andrews & Ingersoll  
300 East Lombard Street, 19<sup>th</sup> Floor  
Baltimore, MD 21202

Gregory A. Cross, Esquire  
Venable, Baetjer & Howard, LLP  
1800 Mercantile Bank & Trust Building  
2 Hopkins Plaza, Suite 1800  
Baltimore, MD 21201

Office of the U.S. Trustee  
300 West Pratt Street, Suite 350  
Baltimore, MD 21201

Andrew DeNatale  
Evan C. Hollander  
White & Case, LLP  
1155 Avenue of the Americas  
New York, NY 10036

Peter M. Palladino  
Douglas R. Gooding  
Choate, Hall & Stewart  
53 State Street, Exchange Place  
Boston, MA 02109

Martin T. Fletcher, Esquire  
Whiteford, Taylor & Preston, L.L.P.  
7 St. Paul Street, Suite 1400  
Baltimore, MD 21201

Alan Lipkin, Esquire  
Willkie, Farr & Gallagher  
787 Seventh Avenue  
NY, NY 10019-6009

Easy Gardener  
1750 17<sup>th</sup> Street  
Paris, KY 40361-1160

Lori S. Simpson, Esquire  
Two North Charles Street  
Suite 500  
Baltimore, Maryland 21201

Sandor Dev. Co.  
c/o Alan M. Grochal, Esquire  
Tydings & Rosenberg L.L.P.  
100 East Pratt Street  
Baltimore, Maryland 21202

Vicgar Limited Partnership  
c/o Elyse Vinitzky, Esquire  
Suite 105  
4801 Hampden Lane  
Bethesda, Maryland 20814

Federal Construction, Inc.  
c/o Eric D. Schwartz, Esquire  
Morris, Nichols, Arshat & Tunnell  
18<sup>th</sup> Floor  
1201 North Market Street  
Wilmington, DE 19801

Joel I. Sher, Esquire  
Shapiro Sher & Guinot  
36 S. Charles Street, Suite 2000  
Baltimore, Maryland 21201

Wells Fargo Retail Finance, LLC  
One Boston Place  
18<sup>th</sup> Floor  
Boston, MA 02108

## **Frank's Nursery & Crafts Limited Service List**

Frank Smith & Sons  
876 Indian Trails Road  
Carleton, Michigan 48117  
Atten: Allan Smith

Combined Properties, Inc.  
c/o Daniel P. Rigterink, Esquire  
7315 Wisconsin Avenue  
Suite 800W  
Bethesda, Maryland 20814

David Daneman, Esquire  
Two North Charles Street  
Suite 500  
Baltimore, Maryland 21201

Serge Brunner  
The Espoma Company  
Six Espoma Road  
Millville, NJ 08332

EBK Properties III, Inc.  
c/o Gregory McCoskey, Esquire  
Glenn Rasmussen Fogarty Hooker, P.A.  
100 South Ashley Drive, Ste. 1300  
Tampa, FL 33602

National Development LLC  
C/o Peter G. Zemanian, Esquire  
Willcox & Savage, P.C.  
1800 Bank of America Center  
Norfolk, VA 23510

Pantech Dev. Corp.  
c/o George P. Osborn, Esquire  
Osborn, Rittman & Osborn  
Suite 501, NBD Building  
402 S. Washington Street  
Marion, IN 46952-1224

James M. Hoffman, Esquire  
Shulman, Rogers, Gandal, Pordy &  
Ecker, P.A.  
11921 Rockville Pike, Suite 300  
Rockville, Maryland 20852

Patrician Prods., Inc.  
c/o Larry I. Glick, Esquire  
1305 Franklin Avenue, Suite 180  
Garden City, NY 11530

Bill Kaye  
F&D Reports  
310 E. Shore Road  
Great Neck, New York 11023

Woodstream Corp.  
c/o Brian W. Bisignani, Esquire  
Duane, Morris, & Heckscher, LLP  
305 North Front Street  
Fifth Floor  
Harrisburg, PA 17108-1003

Frankwood Management Co.  
c/o Earle I. Erman, Esquire  
Erman, Teicher, Miller, Zucker & Freedman  
100 Galleria Officentre, Suite 333  
Southfield, MI 48034

Cedarbrook Plaza, Inc.  
c/o Barry E. Bressler, Esquire  
Schnader Harrison Segal & Lewis, LLP  
Suite 3600, 1600 Market Street  
Philadelphia, PA 19103-7286

Dan Flanigan, Esquire  
Polsinelli Shalton & Welte  
700 West 47<sup>th</sup> Street, Suite 1000  
Kansas City, MO 64112

Lawrence D. Coppel, Esquire  
Gordon, Feinblatt, Rothman, Hoffberger &  
Hollander, LLC  
233 East Redwood Street  
Baltimore, Maryland 21202

Canvasser Companies  
c/o Matthew E. Wilkins, Esquire  
Butzel Long P.C.  
Suite 900 150 West Jefferson  
Detroit, MI 48226-4430

U.S. Home and Gardens  
c/o Leslie Polt, Esquire  
Blank Rome Comisky &  
McCauley LLP  
250 West Pratt Street, Suite 1100  
Baltimore, MD 21201

Thomas D. Renda, Esquire  
Siskand, grady, Rosen, Hoover &  
Levin, PA  
Two East Fayette Street  
Baltimore, Maryland 21202

Simon Property Group, L.P.  
Attn: Ronald M. Tucker, Esquire  
115 West Washington Street  
Indianapolis, IN 46204

David Sippin  
c/o Eric M. Gross, Esquire  
Green & Gross, P.C.  
1087 Broad Street  
Bridgeport, CT 06604

ZAB Realty Corp.  
c/o Shalini Vohra, Esquire  
Silverman Perlstein & Acampora  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753

Curtis Properties, Inc.  
c/o Byron L. Huffman, Esquire  
Byron L. Huffman, P.C.  
5550 Sterrett Place, Suite 314  
Columbia, Maryland 21044

Richard S. Todder, Esquire  
Wendy S. Walker, Esquire  
Morgan, Lewis & Bockius, LLP  
101 Park Avenue  
New York, New York 10178-0060

International Garden Products  
c/o Andrew M. Troop, Esquire  
Christopher R. Mirick, Esquire  
Hutchins, Wheeler & Dittmar, P.C.  
101 Federal Street  
Boston, MA 02110

## **Frank's Nursery & Crafts Limited Service List**

Donnie Braunstein  
Vice President & General Counsel  
International Garden Products  
22 Batterymarch Street  
Third Floor  
Boston, MA 02109

Robert A. Randich, Esquire  
Cohen, Wakim & Merlin, P.C.  
16 Munson Road  
Farmington, CT 06034

Walnut Ridge Properties, Inc.  
c/o Robert D. Gordon, Esquire  
Jackier, Gould, Bean, Upfal &  
Eizelman  
121 West Long Lake Road  
Bloomfield, MI 48304-2719

Merchandising Factors, Inc.  
c/o Jeremy W. Katz, Esquire  
Carr, McClellan, Ingersoll,  
Thompson & Horn, P.C.  
216 Park Road, P.O. Box 513  
Burlingame, CA 94011-0513

Connetquot Assoc.  
C/o Harold Somer, Esquire  
Certilman Balin Adler &  
Hyman, LLP  
90 Merrick Avenue  
East Meadow, NY 11554

Abbey Landmark Operating LLC  
c/o Laurie Selber Silverstein,  
Esquire  
Potter Anderson & Corroon, LLP  
1313 N. Market Street, 6<sup>th</sup> Floor  
Wilmington, DE 19899

Citicorp Vendor Finance, Inc.  
c/o Robert R. Smith, Esquire  
Franch, Jarashaw, Burgmeier &  
Smith, P.A.  
111 Cathedral Street, P.O. Box 928  
Annapolis, MD 21404-0827

People's Bank  
c/o James J. Tancredi, Esquire  
Day, Berry & Howard LLP  
CityPlace  
Hartford, CT 06103-3499

Paul S. Magy, Esquire  
Ian I. Allen, Esquire  
Kupelian Ormond & Magy, P.C.  
Maccabees Center, 9<sup>th</sup> Floor  
25800 Northwestern Highway  
Southfield, MI 48075

Sidell Einbinder Retained Annuity Trust  
c/o Leslie Ann Berkoff, Esquire  
Morritt, Hock, Hamroff & Horowitz, LLP  
400 Garden City Plaza, Suite 202  
Garden City, NY 11530

Vince Velch  
Northern Specialties Sales, Inc.  
6655 County Road #19  
Loretto, MN 55357

DWC Trust Holding Co.  
c/o Lawrence J. Yumkas, Esquire  
Rosenberg Proutt Funk & Greenberg, LLP  
2115 Allfirst Building  
25 South Charles Street  
Baltimore, MD 21201

Lipton Kendrick Assoc., Inc.  
John G. Young, Jr., Esquire  
c/o Blumenfield, Kaplan & Sandweiss, P.C.  
168 North Meramac Avenue  
St. Louis, MO 63105-3763

LaSalle National Bank  
c/o Charles R. Gibbs, Esquire  
Keith M. Aurzada, Esquire  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201

Carolynn Pedreira, Esquire  
Willkie, Farr & Gallagher  
787 Seventh Avenue  
NY, NY 10019-6009

Outlet World, LLC  
C/o Arthur F. Lafionatis, Esquire  
Law Offices of Arthur F. Lafionatis, P.C.  
4300 Montgomery Ave., Suite 305  
Bethesda, MD 20814

Deborah Blevins  
Bayer Corp.  
6950 Squibb Road  
Suite 400  
Mission, Kansas 66202

David A. Hagelstein  
Walnut Ridge Properties, Inc.  
36801 Woodward Avenue  
Suite 313  
Birmingham, MI 48009

The Andersons, Inc.  
c/o Patrick E. Mears, Esquire  
Dykema Gossett PLLC  
300 Ottawa N.W., Suite 700  
Grand Rapids, MI 49503

Vitale Bottled Gas Corp.  
c/o Howard J. Wunderlich, Esquire  
2780 Middle Country Road  
Suite 333  
Lake Grove, NY 11755

Enterprise Shopping Center, LLC,  
Forty West LLC, & Combined  
Properties, Inc.  
c/o Bregman, Berbert & Schwartz  
7315 Wisconsin Ave., Suite 800W  
Bethesda, Maryland 20814  
Hunnington Place Assoc. and  
Lafayette Plaza Assoc.  
c/o Marlene Reich, Esquire  
Sommer & Barnard, P.C.  
111 Monument Circle, Suite 4000  
Indianapolis, IN 46204

D&E Realty Co.  
c/o Robert B. Wasserman, Esquire  
Wasserman, Jurista & Stolz, P.C.  
225 Millburn Ave., Suite 207  
Millburn, NJ 07041

Woodbury Village, LLC  
c/o Michael F. McGrath, Esquire  
Ravich Meyer Kirkman McGrath &  
Nauman, P.A., 4545 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

## **Frank's Nursery & Crafts Limited Service List**

Siemens Financial Services, Inc.  
c/o Charles P. Schulman, Esquire  
Allen J. Guon, Esquire  
Sachnoff & Weaver, Ltd.  
30 South Wacker Drive, Suite 2900  
Chicago, IL 60606

Floral Plant Growers, LLC  
Scott L. Lueder, CFO  
P.O. Box 790  
Denmark, WI 54208-0790

First Baptist Church of Indian  
Rocks  
c/o Jay B. Verona, Esquire  
P.O. Box 41750  
St. Petersburg, FL 33743-1750

Alec Badger or Joyce Jones  
NK Lawn & Garden Co.  
P.O. Box 24028  
Chattanooga, TN 37422-4028

Gary L. Roddy  
Cortlandt Town Center Ltd.  
Partnership  
c/o CBL Management, Inc.  
6148 Lee Highway, Suite 300  
Chattanooga, TN 37421  
Public Service Elec. & Gas Co.  
c/o Suzanne M. Klar, Esquire  
Sheree L. Kelly, Esquire  
80 Park Plaza, T5D  
Newark, New Jersey 07101

Mr. Frank Akman  
905 Holborn Street  
Silver Spring, MD 20902

C-M Howe Properties Limited Partnership  
c/o W. Timothy Miller, Esquire  
Taft, Stettinius & Hollister LLP  
1800 Firststar Tower  
425 Walnut Street  
Cincinnati, OH 45202-3957

Perry Hall Square, LLC & Prem. Equities, LLC  
c/o Bradley J. Swallow, Esquire  
Gordon, Feinblatt, Rothman, Hoffberger &  
Hollander, LLC  
233 East Redwood Street  
Baltimore, Maryland 21202

First Commercial Credit Corp.  
10 New King Street  
White Plains, NY 10604  
Atten: John-Carl Barone

Peter M. Faulkner  
The ACIF Group  
767 Third Avenue, 5<sup>th</sup> Floor  
New York, NY 10017

Russell R. Johnson III, Esquire  
3734 Byfield Place  
Richmond, VA 23233

S&D Realty, LLC and Frany Realty Co., LLC  
c/o Harold Somer, Esquire  
Certilman Balin Adler & Hyman, LLP  
90 Merrick Avenue  
East Meadow, NY 11554

Saturn Universal Limited Partnership  
c/o James B. Larrimore, Esquire  
Serio & Higdon, P.A.  
Suite 110 – York Green  
1300 York Road  
Lutherville, MD 21093-6000

Thai Shun Lee Industrial Ltd. &  
Bester Industrial Ltd.  
c/o John R. Knapp, Jr., Esquire  
Preston Gates & Ellis LLP  
1735 New York Ave, NW, suite 500  
Washington, D.C. 20006

Kimco Realty Corp.  
c/o Neil E. Herman, Esquire  
Morgan, Lewis & Bockius, LLP  
101 Park Avenue  
New York, New York 10178-0600

David Samber  
Kimco Select Investments  
1 Hollow Lane, Suite 304  
Lake Success, NY 11042

Juniper Properties Group  
c/o Barry E. Bressler, Esquire  
Lee R. Sussman, Esquire  
Schnader Harison Segal & Lewis  
Suite 3600, 1600 Market Street  
Philadelphia, PA 19103-7286

Stephen B. Gleich, Esquire  
Gleich, Siegel & Farkas  
36 South Station Plaza  
Great Neck, NY 11021

U.S. Bank National Association  
c/o Monica L. Clark, Esquire  
Dorsey & Whitney LLP  
Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402

Regency Centers Corp.  
c/o Cynthia Jackson, Esquire  
Smith Hulsey & Busey  
1800 First Union Bank Tower  
225 Water Street  
Jacksonville, FL 32202

**LANDLORD SERVICE LIST**

Ernest W. Lane Development Co.  
C/o Lisa Lane Libman  
818 Dodds Drive  
Champaign, IL 61820

Lafayette Plaza Associates  
C/o Skinner & Broadbent GPB Centers  
201 N. Illinois, 23<sup>rd</sup> Floor  
Indianapolis, IN 46204

Merchandising Factors, Inc.  
C/o Zeisler & Zeisler & Augus LLP  
1100 Third Street  
San Raphael, CA 94901

Governor Plaza Associates  
C/o Federal Realty Investment  
Trust  
P.O. Box 8500-S2695  
Philadelphia, PA 19178-2695

One Elmhurst Associates  
C/o First Winthrop Corp.  
Five Cambridge Center, 9<sup>th</sup> Floor  
Cambridge, MA 02142-1493

TMT Management Corporation  
26 Meadow Lane  
Marlboro, NJ 07746

Curtis Properties  
3701 St. Barnabas Road  
Suitland, MD 20747

Combined Properties, LP  
1899 L Street, N.W., 9<sup>th</sup> Floor  
Washington, DC 20036

Saturn Universal Ltd. Partnership  
c/o James B. Larrimore, Esquire  
1300 York Road  
Suite 110  
Lutherville, MD 21093-6000

Benderson Development Co.  
570 Delaware Avenue  
Buffalo, NY 14202-1284

Outlet World, LLC  
7704 Richmond Highway #212  
Alexandria, VA 22306

ACP Jersey Associates  
C/o American Continental  
Properties Inc.  
110 American Blvd., Unit 1  
Turnersville, NJ 08012

Schottenstein Management Co.  
1798 Frebis Avenue  
Columbus, OH 43207-0410

KR Street Associates, LP  
Kramont Operating Partnership LP  
P.O. Box 978, Plymouth Plaza, Suite 200  
5802 West Germantown Pike  
Plymouth Meeting, PA 19462

Sedd Realty Company  
2220 N. Meridian  
P.O. Box 88446  
Indianapolis, IN 46208

Ackrik Associates  
187 Millburn Avenue, Suite 6  
Millburn, NJ 07041

S&E Realty Co.  
2220 N. Meridian  
P.O. Box 88446  
Indianapolis, IN 46208

Howard L. Chertkoff Co., Inc.  
Suite 200, Sterling Bank Building  
106 Old Court Road  
Baltimore, MD 21208

Kimco Development Co.  
c/o Kimco Realty  
3333 New Hyde Park Rd., Ste 100  
P.O. Box 5020  
New Hyde Park, NY 10042

Sickel Realty  
Sickels Center  
South Evergreen Avenue at Elm  
Woodbury, NJ 08096

Esther S. Bondareff  
460 E. Ocean Avenue, Apt. 307  
Lantana, FL 33462



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500 South Second Street  
Springfield, IL 62706

Office of the Indiana Attorney General Steve Carter  
Indiana Government Center South, 5<sup>th</sup> Floor  
402 W. Washington Street  
Indianapolis, IN 46204

Office of the Maryland Attorney General J. Joseph Curran, Jr.  
200 St. Paul Place  
Baltimore, MD 21202

Office of the Virginia Attorney General Mark L. Earley  
900 East Main Street  
Richmond, VA 23219

Office of the Ohio Attorney General Betty D. Montgomery  
State Office Tower  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-3428

Office of the Pennsylvania Attorney General Mike Fisher  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Office of the New Jersey Attorney General John J. Farmer, Jr.  
Hughes Justice Complex  
25 Market Street  
PO Box 080  
Trenton, NJ 08625-0080

# Exhibit A

## FRANK'S NURSERY AND CRAFTS

List of Stores to be Closed in First Quarter of 2001

Store #	Address	City	St	Zip
40	730 East North Avenue	Carol Stream	IL	60187
64	5150 W. 38th Street	Indianapolis	IN	46254
69	1902 South Elmhurst	Mt. Prospect	IL	60056
70	6639 Gov. Ritchie Highway	Glen Burnie	MD	21061
77	250 East Indian Trail	Aurora	IL	60505
83	7350 87th Street	Bridgeview	IL	60455
144	7702 Richmond Highway	Alexandria	VA	22306
145	5610 Linda Lane	Camp Springs	MD	20748
150	6380 Tussing	Reynoldsburg	OH	43068
157	3250 Old Washington Rd.	Waldorf	MD	20602
176	116 Walker Avenue	W. Berlin	NJ	08091
185	90 W. Kemper Road	Springdale	OH	45246
190	2016 State Rd. #9	Anderson	IN	46013
196	5201 Belair (Route 1)	Gardenville	MD	21206
200	2605 Street Road	Bensalem	PA	19020
204	3555 State Road #38	Lafayette	IN	47905
227	8287 Springboro Pike	Miamisburg	OH	45342
229	S. Evergreen Ave. & Elm St.	Woodbury	NJ	08096
234	Route 38 & Church Rd.	Cherry Hill	NJ	08034
253	9463 Annapolis Road	Lanham	MD	20706
256	105 Garrisonville Road	Stafford County	VA	22554
604	348 Route 9 N.	Englishtown	NJ	07726

# Exhibit B

CONFIDENTIAL

**FRANK'S NURSERY & CRAFTS  
RETENTION PLAN FOR STORE ASSOCIATES**

Eligible Associates:

All associates hired on or before March 15, 2001 (excluding seasonal associates) who work in stores identified as "closing" in Frank's Chapter 11 filing. Specifically, associates classified as:

- Managers
- Assistant Managers
- Regular Full Time Hourly
- Regular Part Time Hourly

Payment Provisions:

To receive payment under this plan an associate must:

- Have been hired prior to March 15, 2001.
- Work through the date required by the company or liquidator. (This date is typically close to the store closing date, although some associates may be asked to leave sooner and some may be asked to stay later.)
- Not have been terminated because of performance issues or violation of company policies.
- Not be continuing their employment with the company.
- Have signed a statement releasing the company from any legal liabilities.

Once an associate receives payment under this plan they cannot be rehired within one year.

Payment Formulas:

Classification	Payout Formula	Minimum Payment	Maximum Payment
Seasonal	Not Eligible		
Regular Part Time	One Week for Each Completed Year of Service. Each week's payout will be based on the average weekly hours the associate worked over the previous six months.	None	3 Weeks
Regular Full Time	One Week for Each Completed Year of Service. Each week's payout will be based on a 40 hour work week.	3 Weeks	5 Weeks
Assistant Managers	One Week for Each Completed Year of Service. Each week's payout will be based on a 40 hour work week.	3 Weeks	6 Weeks
Managers	One Week for Each Completed Year of Service. Each week's payout will be based on a 40 hour work week.	4 Weeks	8 Weeks

Payment Formulas for Promotions:

- Associates who were promoted into another classification after March 15, 2000 (and who qualify for a payment) will have their payment calculated by using more than one payout formula.
- The appropriate payout formula and wage will be applied for each position and reduced proportionately by the percentage of time after March 15, 2000 spent in the other position.
- Payments for each position will be added together to determine the total payment.

Frank's Nursery Crafts  
Retention Plan Calculation - All Associates

Retention Calculation Table for 22 Stores				22 Closing Stores				
	Weeks/Yr	Maximum	Minimum	Total Cost	Number Receiving	Average Payout	Average Wage	Average YOS
Store Manager	1	8	4	\$ 79,293	20	\$ 3,965	\$ 36,727	5.9
Assistant Manager	1	6	3	\$ 40,822	18	\$ 2,268	\$ 14.05	5.2
Full-time hourly	1	5	3	\$ 84,792	62	\$ 1,368	\$ 8.87	5.0
Part-time hourly	1	3	0	\$ 53,108	264	\$ 201	\$ 6.57	1.2
Weeks -	12	Avg Hours - 25		\$ 258,015	364			

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

**In re:**

**FRANK'S NURSERY & CRAFTS, INC., et  
al.,  
  
Debtors.**

\*

\*

\*

Case Nos. 01-5-2415 and 01-5-2416  
(Chapter 11)  
(Jointly Administered  
(under Case No. 01-5-2415)

\* \* \* \* \*

**ORDER: (a) AUTHORIZING DEBTORS TO CONDUCT CERTAIN  
STORE CLOSING SALES PURSUANT TO SECTIONS 105 AND 363  
OF THE BANKRUPTCY CODE AND GRANTING ANCILLARY  
RELIEF RELATED THERETO; (b) AUTHORIZING AND  
APPROVING RETENTION INCENTIVE PROGRAM FOR  
AFFECTED EMPLOYEES; AND (c) GRANTING RELATED RELIEF**

Upon the motion of the above-captioned debtors and debtors in possession (the "Debtors"), dated March 19, 2001 (the "Motion"), for an order pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code"): (a) authorizing the Debtors to conduct certain store closing sales; (b) approving a retention incentive program for affected employees; and (c) granting related relief (the "Motion"), all as more fully set forth in the Motion; and a hearing to consider the Motion (the "Hearing") having been held on March 26, 2001; and due and proper notice of the Motion having been given; and it appearing that such notice is adequate and sufficient under the circumstances, and that no other or further notice is necessary or required; and upon the Motion and the full record of the Hearing, and all prior proceedings in these cases; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and sufficient cause appearing therefor, it hereby is FOUND this \_\_\_ day of March, 2001 that:

A. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Motion.

B. Due and adequate notice of the Motion has been provided.

C. The granting of the relief sought in the Motion is in the best interests of the Debtors, their creditors, and their estates.

NOW, THEREFORE, it hereby is ORDERED:

1. Pursuant to sections 105(a) and 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized to sell Additional Closing Store assets to retail customers free and clear of all liens, claims or encumbrances thereon, with any such liens, claims or encumbrances to attach to the proceeds of the GOB Sales in the order of their priority, with the same validity, force and effect which they now have as against assets sold pursuant to this Order.

2. To the extent that any prepetition liens may be alleged to exist against property sold pursuant to this Order senior to those held by or on behalf of the DIP Lenders, the Debtors shall be authorized, but not directed, to set aside from the proceeds of the GOB Sales, a sum equivalent to the value of the liens asserted until the amount of such liens is determined (either by agreement or Court order).

3. The Debtors are authorized to pay claims arising out of prepetition liens of any taxing authority or other party whose liens are senior to the liens held by or on behalf of the DIP Lenders upon arriving at a resolution of the liens that is mutually satisfactory to the Debtors and the party asserting the lien. If a dispute arises between the DIP Lenders, the Debtors, and any third party asserting a lien or other claim in and to the proceeds of the GOB Sales, the



distribution of any monies in respect of any such lien or claim shall be subject to further order of the Court upon not less than five (5) business days' notice to counsel to the DIP Lenders, the Committee, and the Debtors.

4. The Debtors are authorized to sell the fixtures, furniture, equipment, and inventory at the Additional Closing Stores and to take such other and further actions as may be necessary to effectuate the GOB Sales, including, but not limited to, to advertise, post indoor and outdoor signs and banners and otherwise promote the GOB Sales as "going-out-of-business," "total liquidation," "store closing" or similar type sales without further consent of any person or entity, notwithstanding any restrictive provision of any lease or related documents to which any Debtor is a party purporting to limit such actions.

5. The provisions of this Order are self-executing and each and every federal, state or local agency, department and/or governmental authority, is directed to accept this Order as authorizing the Debtors and their agents to consummate the GOB Sales, and no other or further approval, consent, license and the like of any federal, state or local agency, department and/or governmental authority is required to effectuate, consummate and implement the transactions set forth herein or in the Motion.

6. Requirements of federal, state or local agencies, department and/or governmental authorities, if any, relating to such approvals, consents, licenses, waiting periods, time limitations and the like, shall be and hereby are superceded and inapplicable with respect to: (a) conducting and advertising the GOB Sales in the manner set forth herein; (b) augmenting inventory and merchandise; and (c) the transfer of inventory between and among Additional

Closing Stores; provided, however, that any laws to the extent affecting public health and safety shall not be affected by this Order.

7. The requirements of state or local bulk sales or similar types of laws or regulations, if any, shall be superceded and inapplicable with respect to the conduct of the GOB Sales at any of the Additional Closing Stores.

8. No person or entity (excluding the Debtors), including, but not limited to, landlords, utility companies, media, governmental agencies, sheriffs, marshals or other public officers, creditors and all those acting for or on their behalf shall take any action to prevent, interfere with, or otherwise hinder, or institute any action or proceeding in any court or other administrative body having as its objective the obtaining of an order or judgment that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect: (a) the conduct or consummation of the GOB Sales pursuant to this Order; (b) the posting of signs, advertising or promotion of such sales in the manner set forth in this Order; and (c) the transfer of inventory between and among Additional Closing Stores.

9. The Retention Program is authorized and approved and pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are authorized but not required to adopt and implement the Retention Program.

10. This Court shall retain exclusive jurisdiction over: (a) the Debtors; (b) the lessors (and, if applicable, their overlandlords) of the Additional Closing Stores; (c) any person or entity asserting a lien or Encumbrance on assets to be sold pursuant to this Order; and (d) each and every federal, state or local agency, department or governmental authority, with respect to any

matters, claims or rights arising from or related to the GOB Sales, the Retention Program, the Motion, or the implementation of this Order.

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JAMES F. SCHNEIDER  
United States Bankruptcy Judge

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